

ANSWER TO VISITATION INSTRUCTION PACKET



TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE NUMBER</u>
Introduction	
When To Use The Packet.....	1
How To Use The Packet.....	2
Tips and Reminders.....	3
Who is Petitioner and Respondent.....	3
Legal Advice.....	3
Organizing Court Papers.....	5
Visitation Process Flowchart.....	6
Section 1: Filing For Visitation	
Starting the Process.....	7
Answer form.....	7
Optional Forms.....	12
Motion to Dismiss.....	12
Consent Order-Custody, Visitation.....	12
Waiver of Rights Under the Servicemembers' Relief Act	13
Where to File.....	14
Additional Instructions.....	16
Grandparent Visitation.....	16
Sample Forms	
Answer form.....	18
Motion to Dismiss.....	20
Consent Order-Custody, Visitation.....	21
Waiver of Rights Under the Servicemembers' Relief Act..	23
Section 2: Parent Education Class	
Certificate of Completion.....	25
Section 3: Mediation	
Consent Orders.....	26

Temporary Orders.....	27
Section 4: Hearing with a Judge	
Scheduling the Hearing.....	30
Motion for Continuance.....	30
The Day of the Hearing.....	32
The Final Custody Order.....	32
Sample Forms	
Motion for a Continuance.....	34



ANSWER TO VISITATION INSTRUCTION PACKET

Use the Answer to Visitation Instruction Packet **ONLY** when:

- You have been named as the Respondent in a Petition for Visitation **OR** a Petition to Modify Visitation.

If you and the Petitioner already agree about how you want the visitation arrangement to be handled, you may file a **Consent Order**. To file a Consent Order, you and the Petitioner write down how you want the visitation arrangement to work and a Hearing Officer will sign your agreement and make it an order of the Court. To obtain a Consent Order, you must file all of the following forms. Each form is described in detail in the Visitation Instruction Packet on the page number listed in parenthesis after it. You must file the **Petition for Visitation** (page 7) **OR** the **Petition for Modification of Visitation** (page 7), the **Custody Separate Statement** (page 9), the **Information Sheet** (page 10) and the **Consent Order-Custody, Visitation** (page 11).

To make this Instruction Packet easier to read, it will explain Visitation as if you wanted to file for Visitation of one child. If you would like to have visitation with more than one child and all of the children have the same mother **AND** the same father, you may file for visitation of all of the children on the same petition. **Please note that if any of the children you are seeking visitation with have different fathers or mothers, you must file for visitation on separate petitions.** For example, if two of the children have one father and one of the children has a different father, you would be required to file two petitions, one for each father.

HOW TO USE THE PACKET

This packet contains general information about the process of filing an Answer to a Petition for Visitation or a Petition to Modify Visitation, basic instructions on how to complete the Court forms you must file, and samples of the completed Court forms.

You should read the instructions and sample forms carefully **before** filling out any forms. All of the forms must be neatly filled out by hand or typed. **ONLY FILE THE FORMS INCLUDED IN THE FORMS PACKET.** The sample forms included in this Instruction Packet are simply to help you understand how to fill out the real forms in the Forms Packet.

YOU DO NOT HAVE TO COMPLETE ALL THE SECTIONS AT ONCE. For example, you do not have to file the forms in Section 2 at the same time as the forms in Section 1. Read the information carefully to ensure you know what you are supposed to do and when.

Please look for the shaded written instructions and the following symbols throughout the packet. They will help guide you.



READ THIS SECTION CAREFULLY



THIS DOCUMENT MUST BE FILED



FILL IN THE BLANKS OR WRITE INFORMATION HERE



YOU DO NOT HAVE TO TAKE THESE STEPS NOW.



TIPS AND REMINDERS ...

- ✓ Make sure to read any **Answers to Frequently Asked Questions** on Visitation. They will help you better understand the Visitation process.
- ✓ Remember who is the Petitioner and who is the Respondent.
 - The **PETITIONER** is the person who filed the Petition for Visitation or Petition to Modify Visitation.
 - The **RESPONDENT** is the person replying (responding) to the Petition, in other words, you.
- ✓ Remember that just because you fill out the forms correctly does not necessarily mean the Court will give you (grant) what you want. It is up to you at the court hearing to prove why the Court should give you what you want.
- ✓ Representing yourself may take a lot of time, may be difficult and may be confusing. The Court will expect you to follow the same rules that attorneys must follow. **If at any point throughout the Court process you are not sure about representing yourself, you should talk to an attorney.**
- ✓ Please remember that **COURT STAFF CANNOT GIVE YOU LEGAL ADVICE**. Should you have a question about what options you have or what

you should do, you should talk to an attorney. Just because you talk to an attorney does not necessarily mean that you must hire that attorney to represent you. Ask the attorney if he/she is willing to meet with you and answer your questions without having to hire that attorney for full representation. Before you meet with the attorney, ask what fees may be involved for such limited services.

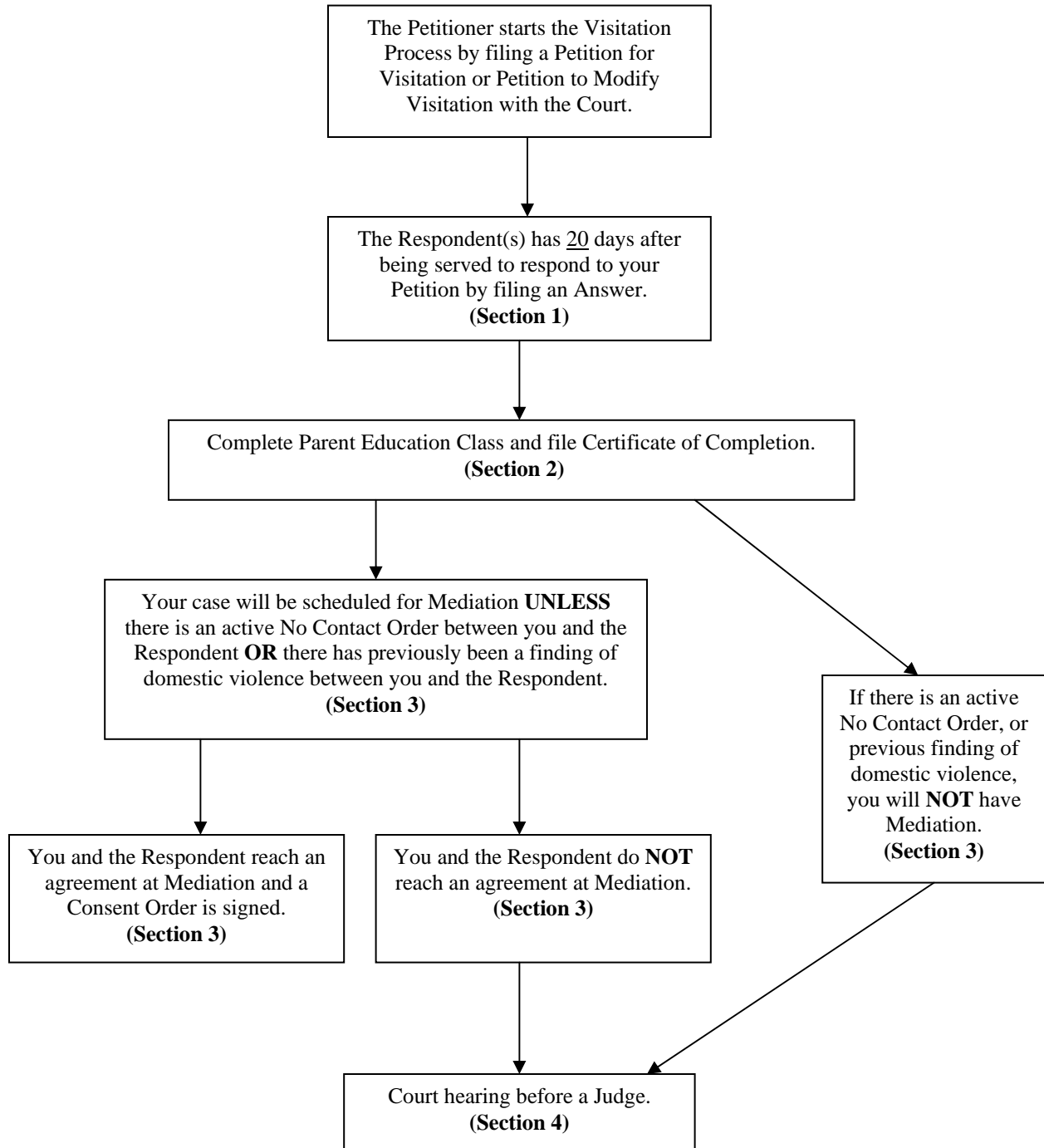
- ✓ If you would like assistance in finding an attorney, you can call the **Lawyer Referral Service** in New Castle County, 302-478-8850, and in Kent and Sussex Counties, 1-800-773-0606. (You may call the same telephone numbers and ask for the **Legal Help Link** to find out if you qualify for free legal assistance.) You also can refer to the **Attorney Roster** that is located at the Family Court Resource Centers. The Attorney Roster is a listing of some of the attorneys who practice family law in Delaware and includes information about how to contact the attorneys and what fees the attorneys charge.
- ✓ **Always bring your government issued photo identification** with you (such as your driver's license, or a state-issued photo identification card) whenever you get a Court form notarized.
- ✓ **THERE IS A LOT OF PAPER IN A COURT CASE AND HAVING THE COURT MAKE YOU COPIES CAN BE VERY EXPENSIVE.**

PLEASE READ AND REMEMBER THESE IMPORTANT TIPS

REMEMBER

- **Keep a copy of every document and court paper.**
- **Keep all notes, documents and court papers together and organized in a folder with the most recent papers on top.**
- **Bring the folder with your papers with you every time you go to Court.**
- **When you file a document with the Court, bring the required number of copies of each paper and an extra copy for you to have “clocked-in.” Keep the clocked-in copy in your folder so you have proof of the time and date you filed each document. You may make copies at the Resource and Self-Help Centers but there is a small fee.**
- **When you complete a document or form for filing with the Court, always include the full case name and file and petition numbers (if there are any).**
- **When you must mail something, we suggest that you use regular mail AND “certified mail, return receipt requested” so that you have proof the other party received the envelope. If you cannot afford to pay for “certified mail” we suggest you get a “certificate of mailing” at the post office to prove that you mailed the envelope to the other party. You may purchase stamped envelopes at the Resource and Self-Help Centers and the Court will mail your Court papers for you by regular mail. You are responsible for certified mailing.**

VISITATION PROCESS



SECTION 1

STARTING THE VISITATION PROCESS



After the Petitioner files a Petition for Visitation or the Petition to Modify Visitation, you will be **served** with notice of the petition. This means that you will receive a **Summons** (a Court document explaining your rights and responsibilities) and **copies** of the petition and any other paperwork the Petitioner filed. Service can be accomplished in the following ways:

- You can be personally served. This means a person designated by the Court will hand the papers to you directly at your home or your job.
- You can be served by mail. This means the papers will be mailed to you by certified mail.
- You can be served by publication which means the Petitioner must publish notice of the Petition for Visitation or the Petition to Modify Visitation in a local newspaper.

Regardless of how you receive notice of the petition, it is **VERY IMPORTANT** to read all documents **carefully** so you can properly respond to the allegations in the petition.



The Petitioner can only file for visitation if the following jurisdictional requirement is met. If the statements on the following page are not true, you should request the Court dismiss the Petition for Visitation or the Petition to Modify Visitation. Please see page 12 for information on how to file a Motion to Dismiss.

- The child had been living in Delaware for **AT LEAST 6 CONSECUTIVE MONTHS BEFORE** the Petitioner filed the Petition for Visitation or Petition to Modify Visitation. (There are exceptions to this 6 month requirement. If the child has not lived in Delaware for at least 6 months, talk to an attorney to see if an exception applies in your situation.)

FILING AN ANSWER IS YOUR WAY OF TELLING YOUR SIDE OF THE STORY TO THE COURT. The Court will use the information in your Answer when deciding whether or not the Petitioner should be granted visitation. If you **do not** file an Answer, the Court will not know how you feel regarding the Petition for Visitation or Petition to Modify Visitation. It is **VERY IMPORTANT** that you file an Answer, so the Court knows how you feel about the visitation petition.



To respond to the Petition for Visitation or Petition to Modify Visitation, you **MUST** file the **ORIGINAL** with the Court and mail **ONE (1) COPY** of each form below to the Petitioner and any other Respondent **within 20** days of receiving the Petition:



Answer form. *(file one original and mail one copy to the Petitioner and any other Respondents)*

- The Petitioner will have filed **EITHER** a Petition for Visitation **or** a Petition to Modify Visitation. The following information describes when the Petitioner should file each type of Petition:
 - If you and the other party have **never** had a court-ordered visitation schedule with the child (this includes a visitation schedule that is part of a Custody Order), the Petitioner should have filed a Petition for Visitation asking the Court to **enter an initial visitation order**.
 - If you and the other party **do** have a court-ordered visitation schedule with the child, the Petitioner should have filed a Petition to Modify Visitation asking the Court to **change** the current visitation schedule.If you think the Petitioner has filed the wrong petition include this information in your Answer.
- In your Answer you may **admit** (you agree the statement is true) or **deny** (you believe the statement is false) any statements made by the Petitioner in the petition. If the Petitioner numbered his/her statements, write down

the number then state whether you admit or deny that statement. An example can be found on the Sample Answer on page 18. If the Petitioner did not number his/her statements, write down the statement itself then state whether you admit or deny that statement. If you deny the statement, explain to the Court **why** the Petitioner's statement is not true. **If you do not respond to a statement, the Court will assume you agree that the statement is true.** If you believe a statement is false, you **must deny** it.

- **Before** the Court can decide a visitation matter, it must determine that the State of Delaware has jurisdiction to make a decision. For Delaware to have jurisdiction to decide visitation the child must have been living in Delaware for **at least 6 consecutive months** before the petition was filed. If this is not true, include this information in your Answer. (There are exceptions to this 6-month requirement. Talk to an attorney to see if an exception applies in your situation.)
- When responding to the Petition for Visitation or Petition to Modify Visitation, you want to give the Court information so it can decide why it is **NOT** in the child's "**best interest**" for the Petitioner to be given what they have requested in his/her petition. Generally, the child's "best interest" is the legal standard the Court must follow when deciding who should have custody of a child. (See Title 13 of the Delaware Code, section 722.) The Court will want to know about the following things when deciding what is in the child's "best interest." Explain to the Court how the following things apply in your situation.

1. The wishes of the child's parents as to his/her custody and living arrangements;
2. The wishes of the child as to his/her custody and living arrangements;
3. The interaction of the child with his/her parents, brothers and sisters, grandparents and any people living in the child's home;
4. The child's adjustment to his/her home, school and community;
5. The mental and physical health of all individuals involved;
6. How well each parent has in the past and continues to satisfy their parental rights and responsibilities with respect to their children;
7. Evidence of domestic violence; and
8. The criminal history of any party or adult member of a household, including guilty pleas, pleas of no contest and criminal convictions.

The Court will also consider the child's maturity. The Court will establish a visitation schedule that will allow the child to have frequent and meaningful contact with both parents unless that contact would endanger the child's physical health or emotional development. (See Title 13 of the Delaware Code, section 728 (a).)

- If you are responding to a request for grandparent visitation, there are additional legal requirements you should be aware of. Please see page 16 for more information regarding Grandparent Visitation.
- If you need more space to write, you may attach additional pages to the Answer form. Be sure to state on the form that you have attached more

pages, so the Court and the Petitioner will know to look for additional information.

- You must sign your Answer in the presence of a notary public or authorized Court staff.

BELOW ARE OPTIONAL FORMS

ONLY file the following forms if the situation applies to you.



Motion to Dismiss (*file original and mail one copy to the Petitioner and any other Respondent(s)*)

- File this document only if the **jurisdictional requirement** described on page 7 has not been met.
- On this form, you will ask the Court to dismiss the Petition for Visitation or Petition to Modify Visitation. You **MUST** explain how the jurisdictional requirement was not met. An example of a completed Motion to Dismiss is found on page 19.
- When you file the Motion to Dismiss, you must also file a **Notice of Motion** form and a blank **Order form**. For more information on filing a Motion, please see the Motion Overview and Instruction Packet.
- The Motion form the Notice of Motion form and the blank Order form are not included in the Forms Packet. They are available in the Resource Centers located in each courthouse and on the Family Court website.



Consent Order-Custody, Visitation (*file one original*)

- File this document only if **you and the Petitioner have already agreed** on what the visitation should be.
- On this form you will describe for the Court who will have visitation with the child and what the visitation schedule will be.
- When describing the visitation schedule, be as **specific** as possible. Explain the places, dates and times that visitation will occur. Also, explain to the Court who will be responsible for driving the child to and from the visitations. You may want to avoid agreements that simply state that “visitation shall be by mutual agreement of the parties.” While this may make it easier for you and the Petitioner to reach an agreement now, it

gives you no guidance in how visitation will occur should you and the Petitioner be unable to reach a mutual agreement regarding visitation at a later date. It may be better to decide on the details of visitation now, rather than have to come back to Court to resolve your differences in the future.

- You and the Petitioner must both sign and have notarized the Consent Order.
- Before you file the Consent Order, you and the Petitioner **may** have to meet with a court employee to review the terms of your agreement.
- Once you have filed your agreement with the Court, it will be forwarded to a Commissioner who will review your agreement. If the Commissioner finds that the agreement is in the best interest of the child, then he or she will sign the agreement and it will become a court order, called a **Consent Order**.
- Once the Commissioner signs the Consent Order, it is a court order and you and the Petitioner **MUST** follow the terms of the Order. The Court will mail a copy of the signed order to you and the Petitioner.
- The Consent Order is **NOT** included in the Forms Packet. This form is available in the Family Court Resource Centers and on the Family Court Website.



Waiver of Rights under the Servicemembers' Civil Relief Act (*file the original and one copy*). **Complete this section ONLY if YOU, the Respondent ARE in the military.**

- **ONLY** file this form if you **ARE** in the military and would like to **WAIVE** your rights under the Servicemembers' Civil Relief Act.
- This Waiver allows the Court to proceed with the custody process if you are unavailable because of military duties.

- If you are in the military, then you **MUST** file an Answer, an Affidavit of Appearance **OR** a Waiver of Rights under the Servicemembers' Civil Relief Act. If you do not file one of the above, the Court will not schedule your visitation hearing until a Waiver of Rights under the Servicemembers' Civil Relief Act is filed **OR** an attorney is appointed for you.



BE SPECIFIC WHEN COMPLETING THE FORMS and make sure you address **ALL** of the areas explained on page 10 in your petition. Remember, if you fail to respond to any allegation, the Court will assume that you agree the allegation is true. When you complete a form, write in blue or black ink **AND** write neatly.



File the forms at the Family Court **in the County where the child currently lives.**

- In Kent and Sussex Counties you may file your papers at the Resource Centers on the first floor of the Family Court buildings.
- In New Castle County, you may file your papers at the Resource Center on the second floor of the New Castle County Courthouse or, **IF**, you have all of the forms completed, you do **NOT** have any questions, you have made the necessary copies and you do **NOT** need any papers notarized, you may file your papers at the **Central Filing and Payment Center** located on the first floor of the New Castle County Courthouse. There is no staff assistance at the **Central Filing and Payment Center**.
- If you file your papers by mail, the addresses for each courthouse are available on the Family Court website. The Court does **NOT** accept filings that are faxed or e-mailed.



Remember to mail a copy of all the papers that you file with the Court to the Petitioner. You **MUST** fill out the **Affidavit of Mailing** on the bottom of the form telling the Court that you have mailed a copy of the papers you filed to the Petitioner or the

Petitioner's attorney (if there is one). If you do not mail a copy of the Answer form to the Petitioner the Court **may not consider** the information on that form. If there was more than one Respondent, you **MUST ALSO** mail a copy of the Answer that you file to each of the Respondents and indicate you have done so on the Affidavit of Mailing.

ADDITIONAL INSTRUCTIONS FOR SECTION 1



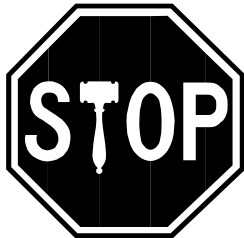
GRANDPARENT VISITATION

- A specific statute addresses grandparent visitation in Delaware. That statute provides the following (See Title 10 of the Delaware Code, section 1031 (7)):
 - The Family Court may give grandparents **reasonable** visitation with their grandchildren; **AND**
 - Visitation with the grandparents must be in the **best interest of the child**; **AND**
 - Whenever possible, maternal grandparents' visitation should occur during the time when mother has the child and paternal grandparents' visitation should occur when father has the child.
- The United States Supreme Court has also ruled regarding grandparent visitation. The Supreme Court found that unless a parent is unfit, **great weight** should be given to the parent's opinion on whether grandparents should be allowed visitation. For example, if the parents of a child decide to deny visitation to the maternal grandparents, the Court will presume that decision is in the best interest of the child. Accordingly, the Court will give that decision great weight when determining whether visitation with the grandparents is in the best interest of the child.
- Grandparents seeking visitation over objection of the parent(s) must be prepared to demonstrate either that the parents are **unfit** to care for the child **OR** that despite the parents' objection visitation is in the **child's best interest**. When dealing with grandparent visitation, it may be beneficial to contact an attorney who can help you better understand the specific laws relating to grandparent visitation.

VISITATION AND CHILD SUPPORT

- Visitation and child support are separate legal actions. Visitation rights are not contingent upon the payment of child support. Likewise, the obligation to pay child support exists regardless of whether visitation is taking place. In other words, a parent cannot be denied visitation with a child simply because he/she has not paid child support. Also, a parent may have to pay child support even though he/she is not allowed visitation with a child.
- For more information on the obligation to pay child support, please see the Child Support Overview and Instruction Packet, or contact the Division of Child Support Enforcement or an attorney.

SECTION 2 BEGINS AFTER THE SAMPLE FORMS FOR SECTION 1.



**YOU SHOULD BEGIN SECTION 2 ONCE YOU
HAVE FILED THE FORMS IN SECTION 1.**

The Family Court of the State of Delaware

In and For ☐ New Castle ☒ Kent ☐ Sussex County

Check the county in which you are filing.

ANSWER



Petitioner

v. Respondent

Name Anne C. Smith	Name John D. Smith	File Number CK04-12111
Street Address 101 Oak Street	Street Address 490 Pine Street	
Apt. or P.O. Box Number Apt. #123	Apt. or P.O. Box Number	Petition Number 04-77775
City State Zip Code Dover DE 19901	City State Zip Code Wilmington DE 19899	
Attorney Name and Phone Number n/a	Attorney Name and Phone Number n/a	

The respondent hereby answers the numbered paragraphs in the pleading as follows:

1. Admitted.
2. Admitted in part. Father has taken a new job but the children stay with their aunt on the weekends and Father is not paying a babysitter.
3. Denied. Although the children are not with Father on the weekends, they stay with their aunt who lives three doors down and get to stay in the neighborhood and play with the child's best interest to spend every weekend in Dover.

Admit or deny each allegation made in the Petition for Visitation.

SWORN TO AND SUBSCRIBED before
me this date:



March 30, 2004



Sign in the presence of a notary.

John D. Smith

Respondent/Attorney

Donna King




Notary Public/Clerk of Court

Signed by notary or court staff.

A copy of this answer must be sent to the Petitioner. See reverse side for Affidavit of Mailing.

AFFIDAVIT OF MAILING

I affirm that at true and correct copy,  the U.S. mail on this date, March 30, 2004 and sent to the Petitioner or the attorney address listed on the petition, being Anne C. Smith, first class postage pre-paid.



Sign in the presence of a notary.



John D. Smith

Respondent/Attorney

SWORN TO AND SUBSCRIBED before me on this date, March 30, 2004.



Signed by notary or court staff.

Donna King

Notary Public /Clerk of Court

The Family Court of the State of Delaware

In and For ☐ New Castle ☒ Kent ☐ Sussex County

Check the county in which you are filing.

MOTION FOR Dismissal

Fill in the title of the motion that you are filing.

Petitioner

Name Anne C. Smith			Name John D. Smith		
Street Address 101 Oak Street			Street Address 490 Pine Street		
Apt. or P.O. Box Number Apt. #123			Apt. or P.O. Box Number		
City Dover	State DE	Zip Code 19901	City Wilmington	State DE	Zip Code 19899
Social Security Number 111-22-3333		Date of Birth 2/3/64	Social Security Number 787-98-6767		Date of Birth 7/13/65
Attorney Name n/a			Attorney Name and Phone Number		

File Number

CK04-12111

Petition Number

Fill in the type of hearing that is scheduled. This information appears on the Notice of Hearing you received in the mail.

A PROCEEDING involving **Custody** having been filed heretofore in this Court,

Movant hereby moves the Court for **Dismissal** and, in support thereof, alleges the following facts:

Explain what you would like the court to order.

The Petitioner and the children have only been living in Delaware for three months. Until January of 2004 Mother, Father and the children lived in the state of Virginia. Because the children have not lived in Delaware for six months prior to Mother filing the Petition for Custody, it should be dismissed.

Describe in detail for the Court why it should grant your motion.

SWORN TO AND SUBSCRIBED before me this date,

March 30, 2004

Sign in the presence of a notary.

John D. Smith

Movant/Attorney

Signed by notary or court staff.

Notary

Court

I, the Movant, affirm that a true and correct copy of this Motion was placed in the U.S. Mail on this date

March 30, 2004

Fill in the Respondent's name and the date that you mailed him/her a copy of the motion.

Anne C. Smith

, first class postage pre-paid.

Sign in the presence of a notary.

SUBSCRIBED

March 30, 2004

Signed by notary or court staff.

Notary

John D. Smith

Movant/Attorney

The Family Court of the State of Delaware

In and For ☐ New Castle ☒ Kent ☐ Sussex County

CONSENT ORDER – CUSTODY, VISITATION

Check the county in which you are filing.

Petitioner

v. Respondent

Name Anne C. Smith	Name John D. Smith	File Number CK04-12111
Street Address 10 Oak Street	Street Address 490 Pine Street	
Apt. or P.O. Box Number Apt. #123	Apt. or P.O. Box Number	Petition Number 04-42301
City Dover State DE Zip Code 19901	City Wilmington State DE Zip Code 19899	
Attorney Name and Phone Number n/a	Attorney Name and Phone Number n/a	

IN THE INTEREST OF the following child(ren):

Name (Child #1) Doug A. Smith	Date of Birth 10/14/91	Name (Child #2) Mary J. Smith	Date of Birth 4/17/96
Name (Child #3)	Date of Birth	Name (Child #4)	Date of Birth
Name (Child #5)	Date of Birth	Name (Child #6)	Date of Birth

The parties in the above-entitled case hereby agree upon the following arrangement and do consent to the entry of an Order providing for the same:

Type of Custody: ☒ Joint Custody ☐ Sole Custody

Custody Awarded to: **Anne C. Smith and John D. Smith**

Physical Placement with: **Anne C. Smith**

Relationship: **Mother**

Address: **10 Oak Street, Apt. #123**

Dover, DE 19901

Visitation Awarded to: **John D. Smith**

Relationship: **Father**

Address: **490 Pine Street**

Wilmington, DE 19899

Check which type of custody you have agreed upon. If you check Joint Custody, you must list both parents on the next line. If you check Sole Custody list only one of the parents on the next line.

Fill in the name of the parent that the child is going to live with most of the time.

OVER

Describe the visitation schedule you have agreed on in detail.

Visitation shall be as follows:



Father shall have visitation with the children every other weekend beginning the first weekend in August. Father will pick the children up from school on Friday afternoon and will have them with him until 4 p.m. on Sunday afternoon. Mother and Father will meet at the McDonald's in Middletown to exchange the children at 4pm on Sunday afternoons. Both parties will try to be on time, but if one is running late, he/she will call the other's cell phone and let him/her know of the delay.

Father shall have visitation with the children every Wednesday evening from 6:30 to 8:30 p.m. Father will pick the children up at Mother's house and will drop them off at Mother's house. If there is a school activity on Wednesday evening so that the child(ren) cannot visit with Father, then Tuesday evening may be substituted.

Father and Mother will follow the visitation schedule set forth in the Standard Visitation Guidelines regarding holidays except for Christmas. Mother will have the holidays in Column 1 on odd years and the holidays in Column 2 on even years. Father will have the holidays in Column 1 on even years and the holidays in Column 2 on odd years. The children will spend all of Christmas Eve with Mother every year and all of Christmas Day with Father every year. Mother will drop the children off at Father's home at 9pm on Christmas Eve and Father will keep the children until 4pm the afternoon before school resumes after Winter Break. Father will drop the children off at Mother's house that afternoon.

Mother will have the children for all of Spring Break.

Fill in the date you have the form notarized.



Affidavit of Consent

Be it remembered that on July 20, 2004, the above named petitioner and respondent personally came before me, the subscriber, a Notary Public for the State and County listed below, who being duly sworn to law did depose and say: I, the undersigned hereby agree upon the following custodial/visitation agreement for the above-named child(ren). I have signed this consent agreement voluntarily and of my own free will.

We hereby waive our right to a Review of a Commissioner's Agreement

Sign in the presence of a notary or court staff.

Order is entered pursuant to this Voluntary



Anne C. Smith

Petitioner

John D. Smith

Respondent

State of Delaware

County of Kent

State of Delaware

County of Kent

Sworn to subscribed before me:

Sworn to subscribed before me:

Donna King

Mediator/Notary Public



Signed by notary or court staff.

Donna King

Mediator/Notary Public

So Ordered this Date:



Signed by Commissioner.

Commissioner

The Family Court of the State of Delaware

In and For ☐ New Castle ☒ Kent ☐ Sussex County

Check the county in which you are filing.

IN RE THE MARRIAGE OF

Anne C. Smith

Petitioner,

and

John D. Smith

Respondent,

File No.: _____

Petition No.: _____

WAIVER OF RIGHTS UNDER THE "SERVICEMEMBERS CIVIL RELIEF ACT"

STATE OF DELAWARE

Kent

COUNTY

Check the county in which you are filing.

ss.

Fill in the date you have the form notarized.

BE IT REMEMBERED, that on this date, March 25, 2004, personally appeared before me, a Notary Public for the State of Delaware in the County declared above, John D. Smith, ("Affiant"), who, being duly sworn by me according to law, did depose and say:

1. That Affiant is the Respondent in the above captioned case.
2. That Affiant is active duty in the United States military: a
3. The Affiant waives his/her rights under the "Servicemembers Civil Relief Act" and so acknowledges that he/she, or his/her attorney, will be required to appear at all legal proceedings associated with the above captioned case.

The "Affiant" is the Respondent. ONLY the Respondent may complete this form. If you are the Petitioner in this proceeding, you may not fill out this form.



Sign in the presence of a notary or court staff.

John D. Smith

Respondent ("Affiant")

SWORN TO AND SUBSCRIBED before me this date, March 25, 2004



Signed by notary or court staff.

Donna Young

Notary Public or Clerk of Court

Section 2

PARENT EDUCATION CLASSES



IF YOU HAVE NOT ALREADY DONE SO, you **MUST** file the certificate below:

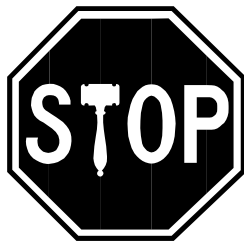


Certificate(s) of Completion of Parent Education Class (*file original(s)*)

Complete this section ONLY if you and the Petitioner are parents of the child named in the Petition for Visitation or Petition to Modify Visitation.

- All parents with children under the age of 17 must take a Parent Education Class. If your child is between the ages of **8 and 16**, he or she must also attend the class. A listing of available classes is available at the Family Court Resource Centers. Once you and your child have completed the Parent Education Class, a Certificate(s) of Completion of Parent Education Class will be given to you.
- You must file the **ORIGINAL** Certificate(s) of Completion of Parent Education Class with the Family Court. If you have already taken the class, an original Certificate(s) of Completion should be in your file.
- Although the matter may be scheduled for Mediation, the Court will **NOT** schedule your Court Hearing before a Judge until the Petitioner files the required Certificates of Completion.
- **BE AWARE**, if you fail to attend the Parent Education Classes and/or do not file your Certificate of Completion with the Court, the Court will take your failure to do so into consideration when deciding whether visitation should occur. The Court may rule against you based on your failure to attend the Parent Education Classes.

- You should register for the Parent Education Classes **AS SOON AS POSSIBLE** because the classes tend to fill quickly and you may be placed on a waiting list.
- The parent with whom the child primarily lives is responsible for taking the child to the classes and filing the original Certificate of Completion. If your child lives with you and the other parent equally, then the Petitioner, as the person who filed the Petition for Visitation or the Petition to Modify Custody, is responsible for taking the children to the classes and filing the original Certificate of Completion.
- If your child **DOES** have to attend the seminars, we suggest you take the children to a provider that offers both the parent seminars **AND** the children seminars to save yourself time and money.



**SECTION 3 DESCRIBES WHAT
HAPPENS NEXT.**

Section 3

MEDIATION



After all of the Respondents have been served with the Petition for Visitation or Petition to Modify Visitation and each of the Respondents has had an opportunity to file an Answer, the Court normally will schedule your visitation matter for **Mediation**. **ALL PARTIES are required to attend.**

- The Court will **NOT** schedule Mediation if there is an active **No Contact Order** involving you and the Petitioner or there has been a previous finding of domestic violence such as the following:

- A Protection from Abuse Order, **OR**
- An adjudication of criminal charges.

If there is an active No Contact Order involving you and the Petitioner, you will **NOT** attend Mediation and the Court will schedule a Court Hearing before a Judge.

- Mediation is **NOT** a Court Hearing. At Mediation, a Mediator (a neutral third party) will **try to help** you and the Petitioner reach an agreement about visitation. The Mediator will ask you and the other party to tell how you both think the matter should be resolved and will work with you to find a solution that is agreeable to both of you. In other words, the Mediator is there to help you and the other party work together in deciding what arrangement is best for your child. Therefore, try your best to come with a “spirit of cooperation.”



CONSENT ORDERS

- If, at the end of Mediation, you and the other party reach an agreement, the Mediator will type your agreement into a document and you and the Petitioner will sign the agreement. The Mediator will also sign the agreement. Then, you will be allowed to leave and the Mediator will give your signed agreement to a

Commissioner. The Commissioner will decide whether your agreement should become a court order, called a **Consent Order**.

- If the Commissioner decides your agreement should become a Consent Order, the Commissioner will sign the agreement and the Consent Order will be mailed to you and the Petitioner. You will **NOT** have to go to a Hearing with a Judge. Most often, the Commissioner will sign a Consent Order proposed by a Mediator.
- Once a Consent Order is signed by a Commissioner, it is a court order and you and the Petitioner **MUST** follow the terms of the Order.



TEMPORARY ORDERS

- If you filed a **Petition for Visitation** and you and the other party do **NOT** reach an agreement at Mediation, the Mediator will suggest a **Temporary (Interim) Order** for a Judge to sign. A temporary order is entered so both parties can have contact with the child while they are waiting for their hearing to be scheduled.
- A Judge will review the suggested Order and will either sign it as an Interim Order or will change some of the terms before signing it as an Interim Order. The case will then be scheduled for a Court Hearing after the Petitioner completes the parent education class (see page 23). The Interim Order will remain in effect until another Court Order is issued. You and the Petitioner **MUST** follow the terms of the Interim Order until that time.
- If you filed a **Petition to Modify Visitation**, then you will not receive a temporary order. The current visitation order will remain in place until you and the Petitioner can have a Court Hearing before a Judge.
- As an alternative, **you and the other party** may reach a temporary agreement at Mediation. This agreement would be made with the

intent that it should only last until the Judge makes a decision after your Court Hearing. If you do this, the Mediator will type your temporary agreement into a document and you and the other party will sign the temporary agreement. The Mediator also will sign the temporary agreement. Thereafter, you will be allowed to leave and the Mediator will give your signed temporary agreement to a Commissioner. The Commissioner will decide whether your temporary agreement should become a court order, which is called an **Interim Consent Order**.



You should come to Mediation prepared to discuss how visitation should occur. You should review the Family Court's **Standard Visitation Guidelines** to get a general idea of visitation arrangements. The Standard Visitation Guidelines are available in the Resource Centers and on the Family Court website. Consider whether the Standard Visitation Guidelines accommodate your and the Petitioner's schedule as well as the schedule of the child. You are not required to follow the Standard Visitation Guidelines. At Mediation, you and the Petitioner can work together to establish a visitation schedule that works best for you, Petitioner and, **most importantly** your child.



Be realistic when asking for the terms of a visitation order. The law says that it is better for a child to have at least some contact with both parents unless that contact would endanger the child's physical health or significantly impair his or her emotional development. The focus is on what is in the **CHILD'S** **best interests**.

Just because **YOU** do not want the other parent(s) to be involved in the child's life may not mean that is in your **CHILD'S** best interest. Therefore, at Mediation, be prepared and try to work together and establish a visitation schedule that is in the best interest of the child.



**IF YOU REACHED AN AGREEMENT
AT MEDIATION, THIS IS THE END OF
THE PACKET.
OTHERWISE, GO TO SECTION 4.**

Section 4

HEARING WITH A JUDGE

SCHEDULING THE HEARING



A **Court Hearing** will be scheduled by the Court **ONLY** if:

- The Mediation was unsuccessful (no agreement or a temporary agreement was reached) **OR** Mediation was not required; **AND**
- The original **Certificates of Completion** for the Parent Education Class have been filed. **THE COURT WILL NOT SCHEDULE A HEARING UNTIL THE CERTIFICATES OF COMPLETION HAVE BEEN FILED WITH THE COURT.**

You do not need to file any additional paperwork to have your hearing scheduled. The Court will notify you when your hearing is scheduled, by mailing you a **Notice** to inform you of the time and date of the **Court Hearing**.



Some judges may schedule a **pre-trial hearing**. The purpose of this hearing is to discuss the status of your case prior to scheduling a full evidentiary hearing where you will present evidence and call witnesses.



If you cannot attend the scheduled hearing, you must file the following form:



Motion for Continuance (*file the original and mail one copy to the Petitioner and any other Respondents*).

- If, once you receive your Notice, you cannot attend the scheduled Visitation Hearing, you must contact the Court **IMMEDIATELY** by filing a **Motion for Continuance**. **DO NOT** call the Court. On this Motion, you must state **very specific reasons** why you cannot

attend the hearing. You must have a legal and unavoidable reason for needing to reschedule the hearing. You cannot request a continuance simply because it is not convenient for you to attend the hearing on the scheduled day. Before you file the Motion for Continuance, you must contact the Petitioner and any other Respondents regarding the continuance and then **tell the Court in your motion how they feel about the continuance**. Because the law is very strict when it comes to rescheduling, these Motions are not always granted. Read the Motions Instruction Packet for more information about Motions.

- You will be notified by the Court if your Motion for Continuance has been granted. **UNLESS THE COURT GRANTS YOU A CONTINUANCE, YOU MUST APPEAR AT COURT THE DAY OF YOUR SCHEDULED HEARING.** If you fail to appear at your hearing, the Court can enter an order granting the Petitioner everything that he/she wants. You would not be given any say in how the visitation arrangement would work.

THE DAY OF THE HEARING



The Court Hearing is a Trial in front of a Judge. At the Court Hearing, you and the Petitioner will each be given an opportunity to tell your side of the case and ask witnesses questions. During the Court Hearing, the Judge expects you to follow a certain procedure. It is important that you are familiar with this procedure so you know what you are allowed to do, when you are allowed to talk, and how to tell your side of the story.



Family Court has developed a **Court Hearing Procedure Overview** that explains generally what the Court Hearing procedure is and should answer many of the questions you have about the procedure. Family Court also has developed a series of **Answers to Frequently Asked Questions on Your Court Hearing** to help you organize and prepare for your Court Hearing. It will be helpful to read this information before your scheduled hearing. All Overviews and Frequently Asked Questions are available in the Resource Centers located in each courthouse.



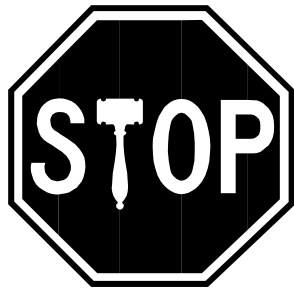
At the hearing, it is up to **YOU** to prove to the Judge **WHY** it is **NOT** in the child's best interest for the Court to grant the Petitioner what he/she is requesting in his/her Petition for Visitation or Petition to Modify Visitation. The best interest standard is explained on page 10 of this Instruction Packet. Information regarding grandparent visitation is found on page 16 of the packet. Review that information before the hearing, so you are prepared to present your case to the Court.



After both sides have presented all of their evidence, one of two things can happen. The Judge can **announce his/her decision** at the end of the hearing, in which case you will leave the Courthouse knowing what the visitation arrangement is. **OR**, the Judge can **reserve decision**. When the Judge reserves decision, he/she considers all of the information presented during the

hearing and issues a written order explaining the visitation arrangement sometime after the hearing. Regardless of how the Judge issues the order, you should receive a copy of the Judge's decision, or Court Order, in the mail.

Once the Court has entered a Visitation Order, you and the Petitioner should follow the terms of the Order. In other words you should do what the Order tells you to do. The Court will not enforce any agreements made by the parties that are not in a Court Order.



**THIS IS THE END
OF THE ANSWER TO
VISITATION
INSTRUCTION
PACKET.**

The Family Court of the State of Delaware

In and For ☐ New Castle ☒ Kent ☐ Sussex County

Check the county in which you are filing.

MOTION FOR Continuance

Fill in the title of the motion that you are filing.

Petitioner

Respondent

Name Anne C. Smith		
Street Address 101 Oak Street		
Apt. or P.O. Box Number Apt. # 123		
City Dover	State DE	Zip Code 19901
Social Security Number 111-22-333	Date of Birth 2/3/64	
Attorney Name and Phone Number n/a		

Name John D. Smith		
Street Address 490 Pine Street		
Apt. or P.O. Box Number		
City Wilmington	State DE	Zip Code 19899
Social Security Number 787-98		
Attorney Name and Phone Number n/a		

File Number

CK04-12111

Petition Number

Fill in the type of hearing that is scheduled. This information appears on the Notice of Hearing you received in the mail.

A PROCEEDING involving **Custody** having been instituted in this Court, Movant hereby moves the Court for **a continuance** and, in support thereof, alleges the following facts:

The parties' daughter, Mary Smith has suffered from severe tonsilitis. She is scheduled for surgery on November 30th, 2004, the date of the parties' custody hearing. I request that the Court grant a continuance so that I can be with my daughter while she is in surgery. I have contacted the Petitioner and she agrees that a continuance should be granted.

Describe in detail for the Court why it should grant your motion. Tell the Court how the other party feels about your request.

SWORN TO AND SUBSCRIBED
before me this date,

Sign in the presence of a notary.

November 10, 2004

Donna King

Notary Public/Clerk of Court

John D. Smith

Movant/Attorney

Signed by notary or court staff.

I, the Movant, affirm that a true and correct copy of this Motion was placed in the U.S. Mail on this date **11/10/2004** by **John D. Smith** at the address listed on the petition, being **John D. Smith**, first class postage pre-paid.

Fill in the Petitioner's name and the date that you mailed him/her a copy of the motion.

SWORN TO AND SUBSCRIBED
before me this date,

Sign in the presence of a notary.

November 28, 2004

Donna King

Notary Public/Clerk of Court

John D. Smith

Movant/Attorney

Signed by notary or court staff.